Nabors Drilling (Labuan) Corp v Lembaga Perkhidmatan Kewangan Labuan

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(i)–25–09 OF 2019 (S)
TENGKU MAIMUN CHIEF JUSTICE, NALLINI PATHMANATHAN AND RHODZARIAH BUJANG FCJJ
2 OCTOBER 2020

Statutory Interpretation — Construction of statutes — Rules of construction — Prevalence of specific over general provisions — Guidelines issued under Labuan Financial Services and Securities Regulations 2010 required leasing transactions between Labuan companies and Malaysian residents to be approved by Labuan Financial Services Authority ('Authority') and be subject to payment of requisite fees — Labuan company sought court declaration that guidelines were contrary to and ultra vires s 7(6) of Labuan Companies Act 1990 ('the LCA') which did not require Labuan company to notify Authority of transactions between itself and a resident with whom it already carried on a licensed activity — Whether s 7(6) of the LCA was merely a general provision which could not override specific legislation and guidelines providing for the licensing and regulation of financial services and securities in Labuan

The respondent, set up under the Labuan Financial Services Authority Act 1996 ('the LFSAA'), was the central regulatory, supervisory and enforcement authority of the Labuan International Business and Financial Centre. The LFSAA empowered the respondent to issue guidelines ('the Guidelines') to regulate, inter alia, leasing business transactions in Labuan. The appellant, registered under the Labuan Companies Act 1990 ('the LCA'), had licensed leasing transactions with a Malaysian company, NDIL Malaysia Sdn Bhd ('NDIL'), resident in Labuan. However, when the appellant leased an offshore oil rig drilling platform ('Rig 503') to NDIL without obtaining the respondent's prior approval and without payment of requisite fees for the purpose, it was fined for the transgression. After securing the respondent's belated approval to the leasing of Rig 503 and paying the requisite fees for the transaction, the appellant filed a judicial review application in the High Court, inter alia, challenging the requirement that the respondent's approval was needed for the leasing of Rig 503 to NDIL in view of s 7(6) of the LCA under which the appellant was purportedly not required to notify the respondent about any subsequent leasing transaction if it was already carrying out a licensed activity with the Malaysian resident. The High Court dismissed the judicial review application. In upholding the decision, the Court of Appeal ('COA') held that there was nothing ultra vires or unlawful about the requirement for payment of fees to obtain the respondent's approval for every

A subsequent leasing transaction. The COA found that item 8.2 of the Guidelines stipulating that all leasing transactions with Malaysian residents were subject to the respondent's prior approval and payment of requisite fees was intra vires the respondent's powers and functions and was not inconsistent with the LCA and other laws affecting the financial and securities services in B Labuan. The COA said s 7(6) of the LCA merely provided generally that for any licensed activity, notification was not required in respect of transactions with a Malaysian resident, but this did not mean approval was not required in respect of any subsequent leasing transaction as stipulated in item 8.2 of the Guidelines. In any case, the COA held that the Labuan Financial Services and C Securities Act 2010 ('the LFSSA'), being a specific legislation providing for the licensing and regulation of financial services and securities in Labuan, prevailed over the LCA with regard to, inter alia, the leasing business carried out by the respondent. The appellant obtained leave to appeal to the Federal Court against the COA's decision on the question whether the Guidelines, specifically D item 8.2 thereof, was contrary to and ultra vires s 7(6) of the LCA.

Held, unanimously dismissing the appeal with costs:

(1) The Guidelines, made under the Labuan Financial Services and E Securities Regulations, to facilitate the exercise of the respondent's powers to, inter alia, impose conditions when granting a licence or giving its approval, was rightly held by the courts below to have the force of law. The Regulations were not ultra vires s 7(6) of the LCA (see para 21).

(2) As held by the courts below, s 7 of the LCA was a general provision F whereas the Regulations and Guidelines made thereunder were specifically enacted to deal with leasing transactions. It was an accepted principle in the construction of statutes that the special or specific provisions of a written law would exclude the operation of the general provisions (see paras 18–19).

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[Bahasa Malaysia summary

Responden, yang ditubuhkan di bawah Akta Lembaga Perkhidmatan Kewangan Labuan 1996 ('ALPKL'), adalah pihak pengawalselia pusat, penyeliaan dan penguatkuasaan Pusat Perniagaan dan Kewangan H Antarabangsa Labuan. ALPKL memberi kuasa kepada responden untuk mengeluarkan panduan ('Panduan tersebut') untuk mengawalselia, antara lain, transaksi sewaan perniagaan di Labuan. Perayu, yang didaftarkan di bawah Akta Syarikat Labuan 1990 ('ASL'), telah meluluskan lesen transaksi sewaan dengan syarikat Malaysia, NDIL Malaysia Sdn Bhd ('NDIL'), yang I bermastautin di Labuan. Namun, apabila perayu menyewa platform penggerudian pelantar minyak di luar pesisir ('Rig 503') kepada NDIL tanpa mendapatkan kelulusan responden terlebih dahulu dan tanpa membayar fi yang diperlukan untuk tujuan tersebut, ianya telah didenda kerana pelanggaran tersebut. Setelah mendapat persetujuan tertunda responden

untuk penyewaan Rig 503 dan membayar fi yang diperlukan untuk transaksi tersebut, perayu telah memfailkan permohonan semakan kehakiman di Mahkamah Tinggi, antara lain, mencabar syarat bahawa kelulusan responden diperlukan untuk penyewaan Rig 503 kepada NDIL memandangkan s 7(6) ASL di mana perayu kononnya tidak perlu untuk memaklumkan kepada responden mengenai sebarang transaksi pajakan selanjutnya sekiranya ia telah melakukan aktiviti berlesen dengan permastautin di Malaysia. Mahkamah Tinggi menolak permohonan semakan kehakiman. Dalam mengekalkan keputusan tersebut, Mahkamah Rayuan ('MR') memutuskan bahwa ianya bukanlah ultra vires atau menyalahi undang-undang berkenaan syarat pembayaran fi untuk mendapatkan kelulusan responden untuk setiap transaksi penyewaan selanjutnya. MR mendapati bahawa perkara 8.2 dari Panduan telah menetapkan bahawa kesemua transaksi sewaan dengan permastautin di Malaysia adalah tertakluk kepada kelulusan responden dan pembayaran fi yang diperlukan adalah ultra vires dengan kuasa dan fungsi responden dan tidak selari dengan ASL dan undang-undang lain terhadap kewangan dan perkhidmatan sekuriti di Labuan. MR mengatakan s 7(6) ASL hanya menyatakan secara umum bahawa untuk setiap aktiviti berlesen, makluman tidak diperlukan berkenaan dengan transaksi dengan permastautin di Malaysia, tetapi ini tidak bermaksud kelulusan tidak diperlukan sehubungan dengan transaksi sewaan berikutnya sepertimana yang dinyatakan dalam perkara 8.2 Panduan tersebut. Bagaimanapun, MR berpendapat bahawa Akta Perkhidmatan Kewangan dan Sekuriti Labuan 2010 ('APKSL'), sebagai undang-undang khusus yang menyediakan perlesenan dan pengawalseliaan perkhidmatan kewangan dan sekuriti di Labuan, terpakai berbanding ASL berkenaan dengan, antara lain, perniagaan penyewaan yang dijalankan oleh responden. Perayu mendapat kebenaran untuk mengemukakan rayuan ke Mahkamah Persekutuan terhadap keputusan MR mengenai persoalan sama ada Panduan tersebut, khususnya perkara 8.2, bertentangan dengan dan ultra vires s 7(6) ASL.

Diputuskan, dengan sebulat suara menolak rayuan dengan kos:

(1) Panduan tersebut, yang dibuat berdasarkan Peraturan-Peraturan Perkhidmatan Kewangan dan Sekuriti Labuan, untuk membantu pelaksanaan kuasa responden untuk, antara lain, menetapkan syarat apabila memberikan lesen atau kelulusan, telah diputuskan dengan tepat oleh mahkamah di bawah untuk memiliki kesan undang-undang. Peraturan tersebut bukanlah ultra vires s 7(6) ASL (lihat perenggan 21).

(2) Seperti yang diputuskan oleh mahkamah di bawah, s 7 ASL adalah undang-undang umum sedangkan Peraturan dan Panduan yang dibuat di bawahnya adalah secara khusus digubal untuk menangani transaksi sewaan. Ini adalah prinsip yang boleh diterima dalam penggubalan undang-undang bahawa peruntukan khas atau khusus berdasarkan undang-undang bertulis akan mengecualikan penggunaan

A undang-undang umum (lihat perenggan 18–19).]

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223, CA (refd)

B *Boddington v British Transport Police* [1999] 2 AC 143, HL (refd)

Express Newspaper plc v News (UK) Ltd and others [1990] 3 All ER 376, ChD (refd)

Kerajaan Malaysia v Wong Pot Heng & Anor [1997] 1 MLJ 437, FC (refd)

C *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97, FC (refd)

Legislation referred to

Labuan Financial Services Authority Act 1996 ss 4A, 28B, 87, 90, 189

Interpretation Acts 1948 and 1967 ss 23, 40, 95

D Labuan Business Activity Tax Act 1990 s 2

Labuan Companies Act 1990 ss 4, 7, 7(5), (6), (6)(a)

Labuan Financial Services and Securities Act 2010 ss 86, 92, 189, 196, Third Schedule

Labuan Financial Services and Securities Regulations 2010

E Labuan Foundations Act 2010

Labuan Islamic Financial Services and Securities Act 2010

Labuan Limited Partnerships and Limited Liability Partnerships Act 2010

Labuan Trusts Act 1996

Offshore Banking Act 1990 ss 23A, 23B

F Offshore Companies Act 1990 s 7(1), (3)

Railways Bylaws 1965 [UK] bylaw 20

Appeal from: Civil Appeal No S-01(IM)(NCVC)-420–11 of 2017 (Court of Appeal, Kota Kinabalu)

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Mohd Arief Emran bin Arifin (Jason Liang, Kellie Allison Yap and Rachel Tey with him) (Wong & Partners) for the appellant.

William Lim Wee Chong (Nur Izzati Rosli and Sylvie Tan Sze Ni with him) (Ariff Rozhan & Co) for the respondent.

H

Rhodzariah Bujang FCJ:

[1] The appellant in this appeal before us is a wholly owned subsidiary of Nabors Drilling International II Limited and registered under the Labuan Companies Act 1990 ('the Act'). The respondent, on the other hand is the central regulatory, supervisory and enforcement authority set up under the Labuan Financial Services Authority Act 1996 ('the Financial Services Authority Act') which is empowered under s 4 of the said Act to enforce not just that Act but as per its Schedule, seven others, including the Act and they are:

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(a) Labuan Business Activity Tax Act 1990 (Act 445);

(b) Labuan Trusts Act 1996 (Act 554);

(c) Labuan Foundations Act 2010 (Act 706);

(d) Labuan Islamic Financial Services and Securities Act 2010 (Act 705);

(e) Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 (Act 707); and

(f) Labuan Financial Services and Securities Act 2010 (Act 704).

[2] On 17 June 2002, the respondent granted a licence to the appellant to undertake a leasing business in Labuan under s 92 of the Labuan Financial Services and Securities Act 2010 ('the Financial Services and Securities Act') and also gave its approval to the appellant to deal with Pool International (M) Sdn Bhd That licence was, on the appellant's own application, terminated on 22 January 2010 by the respondent when the appellant ceased its leasing business activity in Labuan but which business was rejuvenated subsequently by the respondent's grant of another licence to the appellant, upon the latter's application, on 13 July 2011. Vide the same letter the appellant was granted an approval by the respondent to lease one unit of an offshore platform drilling rig, ie Rig 488 to NDIL Malaysia Sdn Bhd ('Ndil Malaysia') and payment of the requisite fees of RM60,000 as stipulated under the Labuan Financial Services and Securities Regulations 2010 ('the Regulations') was made by the appellant.

[3] The crux of this litigation woe lies not with the said leasing of Rig 488 but a subsequent one to the same company, that is Rig 503 which was done without the approval of the respondent and without payment of the requisite fees of RM20,000. RM20,000 is the stipulated fee under the Regulation for a subsequent transaction with a Malaysian resident, which NDIL Malaysia is. The appellant's belated application for approval made in its letter dated 28 October 2013, but served on the respondent on 24 January 2014 was rejected by the respondent on 6 May 2014. Likewise its two appeals against that rejection made on its own and through its agent, Deloitte, respectively, after the appellant was ordered to pay a penalty of RM10,000 via the respondent's letter dated 27 June 2014 for the said business transgression.

[4] The appellant did not give up on its endeavor to get the approval from the respondent for the lease of Rig 503 and its third attempt actually bore fruit when the respondent acceded to its request on 9 April 2015 and granted the approval upon payment of RM20,000 but that approval was not made retrospective. The appellant accepted the decision and effected the payment. However, three months after the said approval, the appellant filed a judicial review application before the High Court for, inter alia, a certiorari to quash

A that decision of the respondent which the learned High Court judge ('HCJ') (as His Lordship then was) dismissed and which decision was affirmed by the Court of Appeal on appeal. On 22 August 2019, the appellant was granted leave to appeal to this court against the said decision on this one question of law:

B

> Is Paragraph 8.2 of the 2013 Guidelines on the Establishment and Operations of Labuan Leasing Business contrary to and ultra vires of Section 7(6) of the Labuan Companies Act 1990?

C **[5]** In its judicial review application, the appellant had included as one of its prayers, a declaration that the above mentioned guidelines do not have the force of law for it serves only to clarify the requirements under the Financial Services and Securities Act. Before delving into the matter further, it is best to first mention, as did the learned HCJ in his judgment, that the above D guidelines are issued by the respondent under s 4A of the Services Authorities Act which reads as follows:

> 4A Power to issue guidelines.
>
> (1) The Authority may, in respect of this Act or the laws specified in the E Schedule or any other matter relating to Labuan financial services, issue guidelines to clarify any provision of this Act or the laws specified in the Schedule to facilitate compliance with the law by a Labuan financial institution or any other matters relating to Labuan financial services.
>
> (2) The Authority may amend or revoke any guideline issued under this F section.

[6] Paragraph 8.2 of the guidelines reads:

> 8.2 Subsequent leasing transactions with Malaysian residents are subject to Labuan G FSA's prior approval and payment of subsequent transaction fee.

The relevant provisions of s 7 of the Act reads:

> 7 Permitted purpose for incorporation.
>
> H (1) A Labuan company may be incorporated for any lawful purpose and, subject to any other written laws on financial services applicable to Labuan, shall carry out business only in, from or through Labuan.
>
> (2) Subject to subsection (3), a Labuan company may carry on a business with a resident.
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> I ...
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> ...
>
> (5) Where a Labuan company carries on a business with a resident, the Labuan company shall notify the Authority of any transactions between the Labuan

company and the resident within ten working days of such transactions.

(6) Notwithstanding subsection (5), a Labuan company is not required to notify the Authority of transactions between the Labuan company and the resident where —

(a) the Labuan company carries on any licensed activity with a resident under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.

JUDGMENT OF THE HIGH COURT

[7] The learned HCJ held that the guidelines are not inconsistent with s 7(6) of the Act or any other Labuan laws because the said section 7 is a general provision on a Labuan company's limitation when carrying out business with a resident and not specifically with a Labuan company with a leasing licence. On the other hand, the LFSS Regulations specifically deals with collection of fees by the respondent as authorised by s 189 of the Financial Services and Securities Act upon approval of a leasing transaction and a subsequent one.

[8] His Lordship further held that the guidelines have the force of law unless it contradicts the primary legislation for the reason that the respondent has been empowered to enforce all the Labuan Acts as enumerated earlier and was given the power to issue guidelines 'to clarify any provision' of the said Labuan Acts or 'any other matters relating to Labuan financial services'. The requirement to obtain its approval for a subsequent leasing transaction falls squarely within that authority of the respondent. It stands to reason, said His Lordship that a regulatory authority that is statutorily empowered by Parliament should be allowed to issue guidelines and collect fees and furthermore, the appellant had accepted the leasing licence with conditions, one of which is compliance with the guidelines and the Regulations. Therefore, said His Lordship, it cannot seek relief to overturn the conditions stated in the licence.

[9] Lastly, the learned HCJ held that the respondent's refusal to grant retrospective approval was not an unreasonable exercise of administrative power as held in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223 considering that the appellant had inordinately delayed seeking that approval by about 20 months and there had been earlier rejections of the retrospective approval sought by the appellant vide the respondent's letter dated 6 May 2014 and 16 December 2014.

THE COURT OF APPEAL JUDGMENT

[10] The Court of Appeal's reasons for dismissing the appellant's appeal are contained in paras 17–20 of the judgment which we would reproduced below:

[17] We found no merit in the argument. First of all, the respondent, being the central regulatory, supervisory and enforcement authority of the Labuan International Business and Financial Centre, has the power to issue the Guidelines pursuant to section 4A of the LFSAA. We agree with learned counsel for the respondent that there is nothing ultra vires or unlawful about the requirement for payment of fee and to obtain the respondent's approval for every subsequent leasing transaction. In fact, the respondent itself in its Affidavit (2) admitted that '... the payment of the RM20,000 is correct in law, as subsequent leasings require payment to the Respondent ...'

[18] It is clear to us that Item 8.2 of the Guidelines, which stipulates that 'Subsequent leasing transactions with Malaysian residents are subject to Labuan FSA's prior approval and payment of subsequent transaction fee', is intra vires the respondent's powers and functions and is not inconsistent with the provisions of the LCA, the LFSAA and the LFSSR. In fact, the LFSSR makes it clear that approval for all Labuan leasing transactions is required, be it first leasing transactions or subsequent leasing transactions, or with residents or non-residents. However, a fee is only payable for leasing transactions involving Malaysian residents.

[19] Further, the authority to collect fees for a subsequent leasing transaction with a resident is already provided for in the third schedule of the LFSSR. Section 7(6) of the LCA merely provides generally that for any licensed activity, notification is not required in respect of transactions with a Malaysian resident. It is stretching the argument to suggest that since not even a notification is required by section 7(6) of the LCA, it follows that no approval is required for any subsequent leasing transaction, notwithstanding Item 8.2 of the Guidelines.

[20] In any event, the LFSSA being a specific legislation which 'provide for the licensing and regulation of financial and securities in Labuan', it prevails over the LCA with regard to Labuan licensed activities, which includes leasing business as carried out by the respondent. The maxim generalia specialibus non derogant applies. The learned judge was therefore right in holding that section 8.2 of the Guidelines does not contradict section 7(6) of the LCA.

THE APPEAL

[11] In an effort to persuade us to depart from that concurrent decisions of the lower courts, learned counsel for the appellant had in his submission taken us through the legislative history governing the financial services in Labuan particularly on the requirement of approval before conducting such a business. It started off with s 7(1) and (3) of the Offshore Companies Act 1990 which require an offshore company to obtain the permission of the Registrar before it could conduct any business with a resident of Malaysia. Section 23A of the Offshore Banking Act 1990 read with s 23B requires registration of an offshore financial business before the business can be conducted. Section 2 of the Labuan Business Activity Tax Act 1990 defines a Labuan company as one incorporated under the Act and includes a foreign Labuan company registered under the Act.

[12] The first two Acts mentioned above have been repealed and replaced with the Act where, as reproduced earlier, under s 7(5), the requirement for approval of the registrar has been substituted with a requirement to notify the authority, that is the respondent as qualified by s 7(6). These new legislative provisions submitted learned counsel for the appellant show liberalisation of the law where now under s 7(6) there is not even a requirement to notify the respondent of the transactions between a Labuan company and a resident for a licensed activity under the Financial Services Authority Act. The Financial Services Authority Act, submitted learned counsel further, does not prescribe a requirement for any leasing transaction either with a resident or with any party to be specifically approved by it, only that under s 87 thereof the party intending to do that business must obtain a licence from the respondent and the respondent is entitled under s 189 to collect licence/fees from the successful applicant. Therefore the guidelines made under the Regulations which is subsidiary to it cannot impose the requirement for the approval especially when viewed in the light of s 196 of the Financial Services and Securities Act which provides as follows:

> Section 196
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> The Minister may, on the recommendation of the Authority, make regulations prescribing all matters and things required by this Act to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

[13] The aforesaid power, according to learned counsel only allows the Minister to issue regulations on any matters that are required to be prescribed or provided for in the said Act but does not entitle him to make any additional requirements unless that is specifically provided for in the Financial Services and Securities Act which only requires, as stated earlier, a licence. Learned counsel referred to this court's decision in *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97, which held that it is a well settled principle that a provision in a statute conferring power on a member of the Executive to enact subsidiary legislation must be construed strictly and following the decision of *Kerajaan Malaysia v Wong Pot Heng & Anor* [1997] 1 MLJ 437, a person is empowered to make subsidiary legislation only when the parent Act provides the person with such power. He also raised s 23 of the Interpretation Acts 1948 and 1967 which clearly provides:

> 23 Avoidance of subsidiary legislation in case of inconsistency with Act.
>
> (1) Any subsidiary legislation that is inconsistent with an Act (including the Act under which the subsidiary legislation was made) shall be void to the extent of the inconsistency.
>
> (1A) For the purposes of subsection (1), any subsidiary legislation made under an Act is not inconsistent with that Act or any other Act merely by reason of the absence in the Act under which it is made of any provision relating to the commencement, application, operation, interpretation or construction of the

A subsidiary legislation or to any other matter in connection with such subsidiary legislation if provisions relating to the commencement, application, operation, interpretation or construction of, or other matter in connection with, subsidiary legislation generally are contained in this Act.

(2) In this section 'Act' includes a federal law styling itself an Ordinance or B Enactment.

[14] The appellant's counsel concluded his submission on this issue by this statement:

C 53. Parliament does not legislate in vain, the purpose of the said changes must be considered and promoted. The intention of Parliament to remove the requirement for approvals once a party is duly licensed should be respected by the Respondent and it should not be allowed to impose the said requirement through subsidiary legislation.

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[15] As for the Court of Appeal's remark that the respondent did not previously challenge the guidelines and in fact accepted it, that conduct does not, submitted learned counsel, remedy the subsidiary legislation which is unlawful or ultra vires and cited the House of Lords decision in *Boddington v British Transport Police* [1999] 2 AC 143 which we must say is not relevant on E the facts before us because there the issue was whether the appellant could challenge the validity of the Railways Bylaws 1965 before the stipendiary magistrate where he was charged for violating bylaw 20. The quotation from the cited case highlighted by learned counsel for our consideration at p 158 of the report, to wit:

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The Anisminic decision established, contrary to previous thinking that there might be error of law within jurisdiction, that there was a single category of errors of law, all of which rendered a decision ultra vires. No distinction is to be drawn between a patent (or substantive) error of law or a latent (or procedural) error of law. An ultra vires act or subordinate legislation is unlawful simpliciter and, if the presumption in G favour of its legality is overcome by a litigant before a court of competent jurisdiction, is of no legal effect whatsoever.

is, with respect, of no assistance to his client for the issue here is one of estoppel by conduct, that is, having accepted the validity of and made due compliance H of the Guidelines, should the appellant be allowed to mount the challenge on its validity now?

[16] Our answer to that is, a no because the above was not the only conduct of the appellant which militates against the grant of the reliefs sought but its I lackadaisical attitude is another. As rightly raised by learned counsel for the respondent, the appellant only made the application for the approval of that leasing transaction for Rig 503 some 20 months after entering into that transaction. Equally important to consider is its other conduct in accepting the non-retrospective approval for the transaction by effecting the payment as

stipulated in the respondent's dated 9 April 2015 which we had mentioned earlier. Such conscious conduct on the part of the appellant, viewed cumulatively must surely be held against it for it raises the application of the principle of law, in the words of Sir Nicholas Broune-Wilkinson VC in *Express Newspaper plc v News (UK) Ltd and others* [1990] 3 All ER 376 '... that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt an inconsistent stance'.

[17] Even if we were prepared to excuse the said behaviour of the appellant, we are still unable to accede to its appeal for the following reasons. Although on the surface it would appear from the legislative provisions mentioned above that the dispensation of the need by a Labuan company to notify the respondent of the licensed activity with a resident under the Financial Services and Securities Act or the Labuan Islamic Financial Services and Securities Act 2010 that there is indeed a liberalisation of the law as contended by the appellant, nevertheless when one were to consider the fact that the authority which must be notified (under s 7(5)) or not notified (under s 7(6)) in the Act is the very same authority who is empowered to grant the approval for the transaction under the Guidelines, the said dispensation is pure common sense. Why is there a need to notify oneself when one has given the approval? That surely is pure redundancy of action which defies logic and that defiance is even more obvious when we consider the fact that the introduction of s 7(6)(a) of the Act vide Act A1367, as submitted by learned counsel for the respondent, was done at the same time as the Financial Services and Securities Act.

[18] Further, as held by the learned HCJ, the respondent's authority as conferred by s 4 of the Financial Services Authority Act to issue the guidelines is not just '... to clarify any provision ...' of the Act and to '... facilitate compliance with the law ...' but also '... any other matters relating to Labuan financial services'. The requirement for the approval surely falls within the scope of the underlined words above as does the authority to impose and collect the fees as described earlier which is even specifically provided in s 189 of the Financial Services and Securities Act. We are totally in agreement with the learned HCJ that s 7 of the Act is a general provision whereas the Third Schedule of the Regulations, made under the Financial Services and Securities Act and thereafter the Guidelines made under the Regulations are specifically enacted and made, respectively, for the leasing transactions. As submitted by learned counsel for the respondent, the Financial Services and Securities Act is a comprehensive statue dealing with '... licensing and regulation of financial services and securities in Labuan ...' and under s 86 of the said Act, leasing business falls under financial business. The said Act under s 189 specifically

empowers the respondent to, inter alia, prescribe fees for the activities of a licensed or registered entity when any consent, licence or registration is granted. The full section reads:

> 189 Annual and licence fees
>
> (1) The Authority may prescribe such annual, licence or registration fees by regulations in respect of the activities of a licensed or registered entity or other activities under this Act.
>
> (2) Such fees as may be prescribed shall be payable on or before 15 January of every year following the year in which any consent, licence or registration is granted.
>
> (3) An unpaid fees may be sued for by the Authority by action as a civil debt and in addition the Authority may require payment of a penalty for late payment up to an amount equivalent to twice the amount of the fees unpaid and costs of recovering the amount including but not limited to costs of legal proceedings.

The Third Schedule of the Regulation of course have expressly stipulated the fees for the leasing transaction upon approval being granted by the respondent.

[19] As rightly submitted by learned counsel for the respondent and held by the Court of Appeal, it is an accepted principle in the construction of statutes that where there are two provisions of written law, one general and the other specific, then the special or specific provisions excludes the operation of the general provision. The Latin version of that principle is *generalibus specialia derogant.*

[20] Furthermore, the respondent's power as provided in ss 90 and 28B, respectively under the Financial Services Authority Act includes the power to request for information not just on that of the applicant but its customer as well. Learned counsel for the respondent pointed out, by referring to exh LFSA9, that is, Deloitte's letter dated 16 June 2011 and 7 July 2011 annexed to its affidavit in reply (2) affirmed on 9 May 2017 (at pp 1292–1297 of appeal record Vol 4), that such an information had been given to the respondent by the said company on behalf of the appellant. Again, given that this is part and parcel of the respondent's power, not just as the chief supervisor but also the main regulator and enforcer of Labuan's international business and financial services industry, the need to notify it of the leasing transactions under the Financial Services and Securities Act is again redundant for it already possessed all the information necessary for the execution of its statutory powers.

[21] Given such wide powers of the respondent and in view of s 40 read with s 95 of the Interpretation Acts 1948 and 1967, it has the implied power to enforce it by, inter alia, making a subsidiary legislation and to impose conditions when granting a licence or giving its approval. The guidelines made under the Regulation to facilitate the exercise of the said power, again was

rightly held by the learned HCJ and the Court of Appeal to have the force of law and as held in their respective judgments, the Regulation is not ultra vires s 7(6) of the Act. That is the very same view that we adopt here. The question of law posed is therefore answered in the negative and consequentially, the appeal is dismissed with cost.

Appeal dismissed with costs.

Reported by Ashok Kumar